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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

FELICIA LAURA COLLIER,

Plaintiff and Appellant,

v.

EAST BAY MUNICIPAL UTILITY
DISTRICT,

Defendant and Respondent.

A139817

(Alameda County
Super. Ct. No. RG12661368)

Appellant Felicia Collier was terminated from her job at respondent East Bay Municipal Utility District (EBMUD) after an investigation confirmed that she made a credible threat of violence against her coworkers. This termination, and events surrounding it, spawned at least four separate actions by Collier against her former employer, three of which have lead to appeals in this court.¹ In the first, we dismissed Collier's appeal from the trial court's grant of summary judgment in favor of EBMUD for failure to file an opening brief. (*Collier v. EBMUD*, A135460 (*Collier II*).)² In the second, we affirmed the trial court's dismissal of Collier's first amended complaint on a demurrer by EBMUD, agreeing that her action was barred by her failure to timely present a claim in compliance with the Government Tort Claims Act (Gov. Code, § 900 et seq.)

¹ Collier represents in her opening brief that there have been five such actions. We are aware of only four.

² *Collier I* was a worker's compensation claim. (*Collier v. East Bay Municipal Utility Dist.*, WCAB no. ADJ6875088.)

(Tort Claims Act) (*Collier v. EBMUD* (Mar. 24, 2014, A139201) [nonpub. opn.] (*Collier IV*).)³ In the third—the appeal currently before us—we shall affirm the trial court’s dismissal of Collier’s second amended complaint, again on the basis that she failed to timely comply with the mandatory presentment requirements of the Tort Claims Act.

BACKGROUND

On December 27, 2012, Collier, acting in propria persona, filed a complaint against EBMUD, followed by a first amended complaint four days later. The first amended complaint was filed on the Judicial Council form entitled, “Complaint—Personal Injury, Property Damage, Wrongful Death,” and indicated that it was for invasion of privacy. On the form, Collier checked the boxes in paragraph 9 indicating that she was required to comply with a claims statute and had in fact done so.

Collier attached two causes of action to the complaint. The first, for general negligence, alleged that EBMUD had “[n]eglected [her] civil rights and the laws of the State of California” since 2008. The second, for intentional tort, alleged that EBMUD “[p]urposely, willfully and intentionally violated [her] civil rights and the laws of the State of California,” also since 2008. Documents appended to the first amended complaint suggested that Collier’s claims stemmed from her belief that EBMUD had illegally hired private investigators to investigate her.

On February 19, 2013, EBMUD demurred to the first amended complaint on the grounds that Collier’s claims were barred by the Tort Claims Act, the statutes of limitations, and collateral estoppel; failed to state facts sufficient to constitute a cause of action; and were uncertain.

Collier vigorously opposed the demurrer, appending 499 pages of exhibits to her opposition in an effort to demonstrate the merits of her allegations.

³ In that opinion, we detailed the numerous defects in Collier’s opening and reply briefs. (*Collier IV*, pp. 2–4.) Her briefs here suffer from the same flaws but, as before, we nevertheless decide her appeal on its merits.

On May 14, the court sustained EBMUD's demurrer with leave to amend, as follows:

"The First Amended Complaint is extremely vague about what Defendant allegedly did, when, and why Defendant's alleged actions result in any liability to Plaintiff. The Court is unable to determine whether Plaintiff's claims, as pled, are timebarred, or are subject to a collateral estoppel defense, because the Court is unable to determine why Defendant is being sued here.

"Plaintiff is given one final opportunity to allege, in clear and concise language, one or more legally cognizable claims against Defendant, and facts supporting that claim. Plaintiff must clearly allege what Defendant did, and when. An allegation that Defendant 'neglected my civil rights' or 'purposely, willfully and intentionally violated my civil rights', since 2008, at multiple locations in California, is completely inadequate. In addition, Plaintiff must identify a statutory basis for Defendant's liability (see Government Code section 815(a)), and allege facts demonstrating violation of that statute(s).

"If Plaintiff contends that she has complied with applicable claims statutes (see First Amended Complaint, paragraph 9(a)), she must attach a copy of any claim(s) she has presented to Defendant to her Second Amended Complaint."

On May 16, Collier filed her second amended complaint, again stating that it was for invasion of privacy, appending causes of action for general negligence and intentional tort, and checking the boxes in paragraph 9 representing that she was "required to comply with a claims statute" and "has complied with applicable claims statute" She sought damages of \$100,000,000.

The negligence cause of action, which alleged that the injurious acts occurred on January 19 and 20, 2010, stated as follows:

"1. Plaintiff was placed on administrative leave on January 19, 2010 by Leann Gustafson, Construction and Maintenance Manager due to a district investigation involving Elvester Woods. Plaintiff was given documentation to support no contact with East Bay MUD employees, except Union Representatives and Leann Gustafson. Limited

access to District property (Credit Union only). Other District properties were not available without authorization by Leann Gustafson. No notification of private investigators, spotters or Workers' Compensation Investigators. Plaintiff was given RSP 200 Workplace Violence Determination Investigation (final draft), termination papers and restraining order on March 18, 2010.

"In final document Douglas Shuttish, Workers Compensation Investigator, was detailing Plaintiff's behavior. All statements are untrue. Douglas Shuttish was hired November 10, 2008. His position is truck Driver II.

"No notification of private investigators (involving public utility workers) violates California Public Utility Code 8251.

"2. Plaintiff was stalked by a green van, license number 3RLB684 for numerous days. Plaintiff first recognized vehicle December 2005 at Hilltop Mall in Richmond California. Plaintiff was stalked heavily on January 6, 2009. Plaintiff took license plate to Officer Bell at the Richmond Police department. The plate came back registered to a KIA suv. The name associated with the plate is Paul Michael Zachery. Officer Bell asked if I had filed Workers' Compensation. Plaintiff responded, 'No'. On January 7, 2009 the driver of the green van, Dennis Fleming, started work at East Bay MUD, North Area Service Center."

The second cause of action for intentional tort alleged that the following injurious acts occurred in 2008 and 2009:

"The District purposely hired private investigators to work and investigate Plaintiff. Their names are Douglas Shuttish hired 11/10/2008, as Truck Driver II, Richard Wood hired 11/24/2008, as Water Distribution Plumber I and Dennis Fleming hired 1/7/2009, as Water Distribution Plumber I. Plaintiff was never notified of private investigators conducting surveillance or obtaining information about her. Plaintiff was hired 8/29/1983. Plaintiff's last position was Water Distribution Plumber III. Plaintiff was never notified of superintendent's, spotters', Workers' Compensation investigators, private investigators or any other surveillance being conducted. Public utility workers' are to be notified of private investigators.' " There followed a list of the numerous dates

on which Collier purportedly e-mailed management and union officials, as well as the names of the persons e-mailed. The cause of action concluded with the allegation that “[t]he district never confirmed private investigators. The District intentionally violated California Public Utility Code 8251.”

On May 31, 2013, EBMUD demurred to Collier’s second amended complaint, asserting the same bases as its prior demurrer: the causes of action were barred by the Tort Claims Act, the statutes of limitations, and collateral estoppel; failed to state facts sufficient to constitute a cause of action; and were uncertain.

After Collier filed multiple oppositions, the court sustained EBMUD’s demurrer without leave to amend, as follows:

“EBMUD is a public entity. (See, e.g., *Environmental Defense Fund, Inc. v. East Bay Municipal Utility District* (1977) 20 Cal.3d 327, 350.) Therefore, to proceed with litigation against EBMUD, Plaintiff is required to comply with Government Code section 905 et seq. Although Plaintiff alleges she has complied with the applicable claims statute, she did not attach the claim she purportedly presented to EBMUD to her Second Amended Complaint, as required by the Court’s May 14, 2013 Order on EBMUD’s prior Demurrer.

“In Plaintiff’s THIRD opposition brief, filed July 8, 2013, Plaintiff contends that the claim she presented to EBMUD on or about July 30, 2010 (attached to that opposition brief) satisfies the requirements of Government Code section 905 et seq. However, that claim did not include any information about the alleged facts on which this lawsuit is based (i.e., EBMUD’s alleged investigation and ‘stalking’ of Plaintiff.) Therefore, the July 30, 2010 claim is insufficient to satisfy the requirements of Government Code section 910(c)-(e) for Plaintiff to proceed with litigation of the claims alleged in this lawsuit.

“Plaintiff has not alleged facts demonstrating that she ever presented a claim to EBMUD concerning the facts and circumstances on which this lawsuit is based. Plaintiff’s claims are based on on [*sic*] alleged actions by EBMUD occurring prior to January 20, 2010. Therefore, Plaintiff was required to file a claim raising the claims

alleged in this lawsuit with EBMUD no later than July 20, 2010 (see Government Code section 911.2(a)), or to present an application for leave to file a late claim no later than January 20, 2011 (see Government Code section 911.4(b).) Plaintiff has not alleged facts demonstrating that she was physically or mentally incapacitated during the the [*sic*] time period in which a claim was required to be presented (see Government Code section 911.6(b)(3).) Although Plaintiff argues in her SECOND opposition brief, filed on June 19, that she had a mental illness until March 11, 2011, Plaintiff does not assert that she filed a claim with EBMUD within six months of that date, or filed an application to file a late claim within one year of that date. Therefore, Plaintiff's claims asserted in this action are now timebarred.

"Even apart from Plaintiff's failure to allege compliance with Government Code section 905 et seq., Plaintiff's claims would be timebarred by the two year statute of limitations of Government Code section 945.6(a)(2). Again, all EBMUD's alleged actions on which Plaintiff bases her claims occurred prior to January 20, 2010 (in most cases, many years before then), and Plaintiff did not file this action until December 27, 2012. Plaintiff's alleged period of mental illness ending March 11, 2011 does not toll the statute of limitations on her claims. (See Code of Civil Procedure section 352(b).)"

With that, the court dismissed Collier's action with prejudice, and this appeal followed.

DISCUSSION

Standard of Review

A demurrer tests the legal sufficiency of the factual allegations in a complaint. (*McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415.) When the face of the complaint, or matters judicially noticeable, reveals a jurisdictional bar to plaintiff's claims, such as the running of a relevant statute of limitations, the demurrer must be sustained. (*City of Industry v. City of Fillmore* (2011) 198 Cal.App.4th 191, 207.) In reviewing the dismissal of an action following an order sustaining a demurrer, we conduct a de novo review of the complaint, exercising our independent judgment on whether the complaint states a cause of action as a matter of law. (*Moore v. Regents of*

University of California (1990) 51 Cal.3d 120, 125; *Financial Corp. of America v. Wilburn* (1987) 189 Cal.App.3d 764, 768–769.) We assume the truth of properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded, and matters of which judicial notice has been taken, and we afford no credit to contentions, deductions, or legal conclusions. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

The Trial Court Properly Sustained EBMUD’s Demurrer to the Second Amended Complaint

The preliminary hurdle to Collier’s pursuit of her claims against EBMUD in this action is the Tort Claims Act, which mandates the filing of a timely claim for money or damages with a local public entity before filing a lawsuit against that entity. (Gov. Code, §§ 905, 945.4 [with certain exceptions, “no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented . . . until a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board”].) Pursuant to Government Code section 911.2, “A claim relating to a cause of action for death or for injury to person or to personal property . . . shall be presented . . . not later than six months after the accrual of the cause of action. A claim relating to any other cause of action shall be presented . . . not later than one year after the accrual of the cause of action.” The six month limitations period is “ ‘mandatory and must be strictly complied with’ ” (*Chase v. State of California* (1977) 67 Cal.App.3d 808, 812.)

It is undisputed that EBMUD is a public entity. (Pub. Util. Code, § 11501 et seq.; *Environmental Defense Fund v. East Bay Municipal Utility Dist.*, *supra*, 20 Cal.3d 327, 350; *East Bay Municipal Utility Dist. v. Richmond Redevelopment Agency* (1975) 51 Cal.App.3d 789, 791–792.) Accordingly, Collier was required to demonstrate compliance with the mandates of the Tort Claims Act. This, she failed to do.

In her second amended complaint, Collier alleged her date of injury as “January 19–20, 2010” (as to the general negligence) and “2008 and 2009” (as to the

intentional tort). Using the latest date of injury—January 20, 2010—Collier was required to present a claim to EBMUD within six months of that date, or by July 20, 2010. (§ 911.2, subd. (a).) In the order sustaining EBMUD’s demurrer to Collier’s first amended complaint, the trial court required her to “attach a copy of any claim(s) she has presented to Defendant to her Second Amended Complaint.” Collier neither appended such a claim nor alleged facts demonstrating compliance with the presentment requirement.

Alternatively, a claimant who failed to file a timely claim can, within one year from the date of alleged injury, request leave to file a late claim. (§ 911.4, subd. (b).) Again, Collier did not allege that she requested leave to file a late claim on or before January 20, 2011. As such, Collier’s claims are barred by failure to comply with the mandatory provisions of the Tort Claims Act.

Throughout her briefs, Collier weaves multiple theories as to why her lawsuit—which she variously describes as being for invasion of privacy, stalking, or harassment—should be permitted to proceed. These are essentially the same theories she asserted in *Collier IV*. We reject them here, as we did there.

First, Collier contends she satisfied the claim presentation requirement with either a claim she filed on July 30, 2010⁴ or one she filed on March 25, 2013. But the July 30 claim expressly stated that it was for sexual harassment, retaliation, and wrongful termination, and Collier litigated those allegations in *Collier II*. And the March 25, 2013 claim was filed well past the six-month deadline for a 2010 injury.

At the same time, Collier impliedly concedes a lack of compliance with the claim filing deadline by urging that we extend the deadline from six months to five years for an employee of a public entity. This request exceeds the scope of our authority. (Cal. Const., Art. VI, § 1; *Superior Court v. County of Mendocino* (1996) 13 Cal.4th 45,

⁴ Collier’s then attorney signed the claim on July 30, but EBMUD received it on August 2. Both dates are used throughout the briefs and the record as the filing date.

53; *Scott Co. v. United States Fidelity & Guaranty Ins. Co.* (2003) 107 Cal.App.4th 197, 210.)

Collier also suggests that she suffered a psychological injury that tolled the limitations period for filing a tort claim. This argument is also unavailing. Code of Civil Procedure section 352 provides that if a person is insane when a cause of action accrues, one generally does not count the time of the insanity in determining whether a statute of limitations has run. (Code Civ. Proc., § 352, subd. (a).) However, that section also clearly states that it “does not apply to an action against a public entity” for a which a tort claim is required. (*Id.*, subd. (b).) It thus would not apply to Collier’s action against EBMUD.

Further, insanity under Code of Civil Procedure section 352 has been described as a condition that renders the individual “incapable of caring for his property or transacting business, or understanding the nature or effects of his acts.” (*Hsu v. Mt. Zion Hosp.* (1968) 259 Cal.App.2d 562, 571; accord, *Feeley v. Southern Pacific Transportation Co.* (1991) 234 Cal.App.3d 949, 952–953.) The insanity must exist continuously from the date the cause of action arose. (*Weinstock v. Eissler* (1964) 224 Cal.App.2d 212, 230-232.) Collier alleged no facts suggesting that she continuously suffered from this level of incapacity, and in fact her conduct since she initiated her very first claim against EBMUD in 2009 suggests otherwise.

Collier also represents that she suffered a psychiatric injury and was on state disability until March 11, 2011, and the statute of limitations should not have started to run until that date. As noted above, her psychiatric injury allegations did not rise to the level of insanity required to toll the statute of limitations. But even if we were to accept that they did, her action would still be time barred. If the limitations period began to run on March 11, 2011, Collier would have had six months from that date—or until September 11, 2011—to file her claim with EBMUD. She did not allege that she did so, and the only evidence in the record indicates that she did not file a claim until 2013, well outside the limitations period.

Finally, Collier suggests that the continuing violations doctrine somehow salvages her claims. As this suggestion is unsupported by any explanation or authority, we decline to consider it.

The Trial Court Did Not Abuse Its Discretion In Sustaining the Demurrer Without Leave to Amend

We review the trial court's denial of leave to amend for abuse of discretion. (*Hayter Trucking, Inc. v. Shell Western E&P, Inc.* (1993) 18 Cal.App.4th 1, 13; *Everett v. State Farm General Ins. Co.* (2008) 162 Cal.App.4th 649, 655.) “[W]e determine whether there is a reasonable probability that the defect can be cured by amendment.” (*V.C. v. Los Angeles United School Dist.* (2006) 139 Cal.App.4th 499, 506.) Collier, as the appellant, bears the burdening of proving that the trial court abused its discretion in denying leave to amend (*Blank v. Kirwan, supra*, 39 Cal.3d at p. 318; *Traders Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 43), a burden she has not satisfied.

Collier has not identified any facts she can allege to demonstrate compliance with the Tort Claims Act. Likewise, she has not demonstrated that she can allege facts that would support tolling the limitations period. On May 22, 2013—a week after she filed her second amended complaint—Collier filed two additional causes of action, again for general negligence and intentional tort.⁵ While they contain different allegations regarding the alleged stalking and harassment of which Collier complained, they do not contain allegations sufficient to defeat EBMUD's demurrer. We thus conclude the trial court did not abuse its discretion in sustaining Collier's demurrer without leave to amend.

DISPOSITION

The judgment of dismissal is affirmed.

⁵ As they were filed without leave of court, they do not comprise a part of the second amended complaint.

Richman, J.

We concur:

Kline, P.J.

Brick, J.*

* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.